

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal of the
Order of License Revocation of
New Guidance Counseling Clinic.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for a prehearing conference on Wednesday, November 9, 2011, at 2:30 p.m. at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. Cynthia B. Jahnke and Max Kieley, Assistant Attorneys General, appeared on behalf of the Minnesota Department of Human Services (Department). There was no appearance by or on behalf of the Respondent, New Guidance Counseling Clinic.

On January 27, 2012, the Department filed a motion for issuance of a default recommendation. The OAH record remained open until February 14, 2012, for receipt of a response from the Respondent, but no response was submitted.

STATEMENT OF THE ISSUE

Should the license of New Guidance Counseling Clinic to provide chemical dependency treatment services be revoked under Minn. Stat. § 245A.07, subd. 3, because the Clinic:

- allowed a disqualified individual to provide direct contact services and have unsupervised access to clients or their personal property after an order of immediate removal was issued, in violation of Minn. Stat. §§ 245C.14, subd. 2 and 245C.18;
- allowed an unqualified staff person to provide treatment services to clients served by the program, in violation of Minn. Rules parts 9530.6430, subp. 3, and 9530.6450, subp. 5;
- knowingly provided false and misleading information to the Commissioner of Human Services, in violation of Minn. Stat. § 245A.07, subd. 3;
- allowed progress notes to be entered in client files that were not prepared by the staff person providing the service, in violation of Minn. Rules part 9530.6425, subp. 3(A);

- allowed progress notes to be entered into client files that were not signed by the individual who prepared them, in violation of Minn. Rules part 9530.6440, subp. 1;
- failed to ensure that counseling groups did not exceed an average of 16 clients, in violation of Minn. Rules parts 9530.6445, subp. 4 and 9530.6440, subp. 1;
- failed to document weekly supervision of counselors with temporary permits as required by a variance approved on July 23, 2007, in violation of Minn. Stat. § 245A.04, subd. 9?¹

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 10, 2011, the Notice and Order for Prehearing Conference and Hearing was sent by first class mail to the Respondent, New Guidance Counseling Clinic, at an address in Brooklyn Park, Minnesota.² The Notice scheduled a telephone prehearing conference for September 12, 2011, at 2:30 p.m.

2. The Notice and Order for Prehearing Conference and Hearing issued to the Respondent included the following information:

The Respondent's failure to appear at the hearing or any prehearing conference, may result in a finding that the Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.³

3. The Respondent did not appear at the September 12, 2012, prehearing conference. Because the envelope containing the Notice and Order for Prehearing Conference and Hearing had been returned to counsel for the Department marked "return to sender—unable to forward," it appeared that the Respondent had not received notice of the initial prehearing conference. At the request of the Administrative Law Judge, the Department again attempted service of the Notice and Order for Prehearing Conference and Hearing using a new address in Brooklyn Park. That mailing was not returned.⁴

4. On October 25, 2011, the Administrative Law Judge sent an Order to the Department and the Respondent at the new address. The Order set a new prehearing conference for November 9, 2011, at 2:30 p.m. at the Office of Administrative Hearings,

¹ All references to Minnesota Statutes are to the 2010 version. All references to Minnesota Rules are to the 2011 version.

² Certificate of Service by U.S. Mail of Judy Fusco (Aug. 10, 2011).

³ Notice and Order for Prehearing Conference and Hearing, p. 2.

⁴ October 19, 2011, Letter to Administrative Law Judge from C. Jahnke.

600 North Robert Street, St. Paul, Minnesota 55101. The Order included the following warning in bold type:

Pursuant to Minn. Rules part 1400.6000, if New Guidance Counseling Clinic fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter without the prior consent of the Administrative Law Judge or fails to comply with any interlocutory order of the Administrative Law Judge, New Guidance Counseling Clinic may be deemed to be in default, the allegations contained in the Notice and Order for Prehearing Conference and Hearing may be deemed true without further proof, and the license of New Guidance Counseling Clinic may be revoked or otherwise disciplined without further proceedings.

5. On or about November 1, 2011, Laura Cavanaugh, the Director of Respondent, contacted counsel for the Department and stated that she no longer wished to pursue the appeal. Ms. Cavanaugh said that she would send a letter to the Administrative Law Judge withdrawing the appeal.⁵ However, as of the date of this Report, no letter has been received.

6. The Respondent failed to appear at the November 9, 2011, prehearing conference. The Respondent did not contact the Administrative Law Judge prior to the prehearing conference to request a continuance or make other arrangements.

7. The Department filed a Motion for Default Judgment on January 27, 2012. The Motion notified the Respondent that, "should it wish to contest this Motion, it must file a written response with the Administrative Law Judge and serve copies on all parties within ten working days after it is received."⁶ As of the date of this Report, the Respondent had not submitted any response to the Department's motion.

8. The Respondent is in default in this matter. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference and Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services are authorized to consider the allegations against the Respondent under Minn. Stat. §§ 14.50 and 245A.07.

⁵ Affidavit of Max Kieley, ¶8 (attached to Motion for Default Judgment).

⁶ Department's Motion for Default Judgment, p. 2.

2. The Respondent received due, proper and timely notice of the charges against it and of the time and place of the prehearing conference. All procedural requirements have been fulfilled.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations as set out in the Notice and Order for Prehearing Conference and Hearing or other pleadings may be taken as true or deemed proved without further evidence.

4. The Respondent is in default as a result of its failure to appear at the prehearing conference on November 9, 2011. The allegations in the Notice and Order for Prehearing Conference and Hearing are taken as true and deemed proven.

5. Based upon the facts set out in the Notice and Order for Prehearing Conference and Hearing, the Respondent has violated Minn. Stat. §§ 245A.04, subd. 9; 245A.07, subd. 3; 245C.14, subd. 2; and 245C.18; and Minn. Rules parts 9530.6425, subp. 3(A); 9530.6430, subp. 3; 9530.6440, subp. 1; 9530.6445, subp. 4; and 9530.6450, subp. 5, and is subject to disciplinary action by the Commissioner of Human Services.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Human Services take disciplinary action against the license of New Guidance Counseling Clinic to provide chemical dependency treatment services.

Dated: February 27, 2012.

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Human Services will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties to the proceeding for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Lucinda Jesson, Commissioner, Minnesota Department of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.